

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 DAMON R. JOHNSON,

5 Plaintiff,

6 v.

7 NEVADA DEPARTMENT OF
8 CORRECTIONS, *et al.*,

9 Defendants.

Case No. 2:21-cv-00561-RFB-NJK

ORDER

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11 This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. §
12 1983 by a former state prisoner. On May 18, 2021, this Court ordered Plaintiff to file a
13 fully complete application to proceed *in forma pauperis* by a non-prisoner or pay the full
14 filing fee of \$402 on or before June 17, 2021. (ECF No. 5). The June 17, 2021 deadline
15 has now expired, and Plaintiff has not filed an application to proceed *in forma pauperis*
16 by a non-prisoner, paid the full \$402 filing fee, or otherwise responded to the Court's
17 order.

18 District courts have the inherent power to control their dockets and "[i]n the
19 exercise of that power, they may impose sanctions including, where appropriate . . .
20 dismissal" of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831
21 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
22 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
23 See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for
24 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
25 1992) (affirming dismissal for failure to comply with an order requiring amendment of
26 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal
27 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
28 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (affirming

1 dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,
2 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
3 local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey
5 a court order, or failure to comply with local rules, the court must consider several factors:
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
9 See Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at
10 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

11 Here, the Court finds that the first two factors, the public's interest in expeditiously
12 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
13 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
14 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
15 in filing a pleading ordered by the court or prosecuting an action. See Anderson v. Air
16 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
17 disposition of cases on their merits—is greatly outweighed by the factors in favor of
18 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
19 the court's order will result in dismissal satisfies the "consideration of alternatives"
20 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779
21 F.2d at 1424. The Court's order requiring Plaintiff to file an application to proceed *in forma*
22 *pauperis* by a non-prisoner or pay the full \$402 filing fee on or before June 17, 2021
23 expressly stated: "IT IS FURTHER ORDERED that if Plaintiff does not timely comply with
24 this order, this case will be subject to dismissal without prejudice for Plaintiff to file a new
25 case with the Court when Plaintiff is either able to file a fully complete application to
26 proceed in forma pauperis by a non-prisoner or pays the full \$402 filing fee." (ECF No. 5
27 at 2). Thus, Plaintiff had adequate warning that dismissal would result from his
28 noncompliance with the Court's order to file an application to proceed *in forma pauperis*

1 by a non-prisoner or pay the full \$402 filing fee on or before June 17, 2021.

2 IT IS THEREFORE ORDERED that this action is dismissed without prejudice
3 based on Plaintiff's failure to file an application to proceed *in forma pauperis* by a non-
4 prisoner or pay the full \$402 filing fee in compliance with this Court's order dated May 18,
5 2021.

6 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment
7 accordingly and close this case. No additional documents will be filed in this closed case.

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9 DATED: July 13, 2021

A handwritten signature in black ink, appearing to be 'RFB' with a stylized flourish.

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RICHARD F. BOULWARE, II
12 UNITED STATES DISTRICT JUDGE
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